

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FREDA M. DOWNING)	
Claimant)	
VS.)	
)	
KANSAS MASONIC HOME)	
Respondent)	Docket No. 1,011,740
AND)	
)	
KS. ASSOC. OF HOMES FOR THE)	
AGING INS. GROUP)	
Insurance Carrier)	

ORDER

Claimant appealed the August 28, 2003 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

ISSUES

Judge Clark found claimant suffered personal injury by accident arising out of and in the course of her employment with respondent on March 20, 2002, but denied all benefits because claimant failed to prove that her current problems were caused by that work-related accident.

Claimant contends that she was not only injured on March 20, 2002, but thereafter suffered a series of accidents and injuries each and every working day through her last day of work in March of 2003. Claimant further argues that her present problems are directly due to those work-related injuries.

Respondent agrees with Judge Clark's findings and asks that the preliminary hearing Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant worked off-and-on for respondent over approximately ten (10) years. Before March 20, 2002 she had never suffered a substantial back injury nor had she ever missed work because of a back injury. On March 20, 2002, she was working for respondent as a charge nurse and a unit manager. She went into a resident's room to check on a resident. As she bent over to check the legs of the resident she felt "excruciating pain at the small of my back, burning pain radiating down both legs."¹ She reported the incident to her unit manager but did not request medical treatment. She finished out the work day and worked five (5) days after that. Thereafter, she called in sick and was sent for treatment with Dr. Robert Wilson. He took x-rays and provided her with physical therapy and temporary work restrictions of no lifting over 15 pounds, no stooping and no climbing ladders. On April 8, 2002, Dr. Wilson released claimant to return to full duty work with no restrictions. Claimant continued to work and performed her regular job duties for respondent until March 9, 2003 when she voluntarily left to take other employment in Oklahoma City.

In June 2003 claimant saw a Dr. John W. Drake in Oklahoma City with complaints of severe back pain radiating into her left leg. Dr. Drake referred claimant to a neurosurgeon, Dr. Daniel R. Stough. Dr. Stough diagnosed a herniated disc at L4-5 with L4 radiculopathy superimposed on pre-existing degenerative lumbar disk disease. A June 27, 2003 MRI revealed degenerative disc disease of the lumbar spine and bulging discs at L2-3, L3-4, L4-5 and L5-S1. The MRI report indicated spondylitic and discogenic changes of the lumbar spine most severely effecting the L-4-L5 level where an annular disc bulge, central disc protrusion and right foraminal disc protrusion/extrusion cause mild central stenosis with moderate left but severe right L4 foraminal stenosis as described.²

Claimant said she continued to have muscle spasms and leg pain at work after March 20, 2002. But she did not seek any additional medical treatment for her back from respondent during the approximately eleven (11) months she worked and performed her regular job duties from the time of her release by Dr. Wilson in April 2002 until she left in March 2003. And although claimant said she experienced episodes of pain and muscle spasms at work, she continued performing all of her regular job duties. She did occasionally complain about her back but she did not seek any accommodations or job modifications. However, claimant said she was receiving some analgesic medications from her family doctor during this time period.

Claimant saw Dr. Drake for the first time as a new patient on May 28, 2003. His records reflect that at the time she reported to him that she "feels great." There is no

¹ P.H. Trans. at 8.

² P.H. Trans., Cl. Ex. 1.

record of back complaints nor any history of back problems in the chart for that office visit. But on June 24, 2003, she presented to Dr. Drake with "severe back pain goes to left leg - worse when sitting. Better [with] walking."³ This does not suggest an ongoing problem as claimant alleges, but rather indicates an onset or some type of aggravation between those May 28 and June 24, 2003 examinations.

Based upon the record compiled to date, the Board agrees with the ALJ that claimant has failed to prove a direct causal connection between her work activities with respondent and the herniated disc condition that was diagnosed in June of 2003. As provided by the Act, preliminary hearing findings are not final but are subject to modification either upon the presentation of additional evidence at another preliminary hearing or upon a full hearing of the claim.

WHEREFORE, the Appeals Board affirms the August 28, 2003 Order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of November 2003.

BOARD MEMBER

c: James R. Roth, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its insurance carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ P.H. Trans., Cl. Ex. 1.